

## Part III The System for People's Procuratorates

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## **PART THREE**

### **THE SYSTEM FOR PEOPLE'S PROCURATORATES**

#### **A. ESTABLISHMENT OF SYSTEM OF PROCURATORATES IN CHINA**

The establishment of Chinese system of procuratorates is shaped by the legal structure and ideas of former Soviet. After the People's Republic of China was founded, the Organic Law of the Central People's Government stipulated the establishment, status, functions and powers of the procuratorates, which was the legal basis of the system of procuratorates in the new China. Article 5 of this Law provided that the Committee of Central People's Government establishes the State Council as the supreme executive organ in charge of national affairs, and sets up the Supreme People's Court and the Supreme People's Procuratorial Administration as national supreme judicial organ and supreme procuratorial organ respectively. According article 28, the Supreme People's Procuratorial Administration has the supreme procuratorial authority to ensure that the governmental organs, state functionaries and all of the citizens in the country observe the law. On October 1, 1949, the People's Republic of China was founded and the Supreme People's Procuratorial Administration was set up on the same day which was open to the public on November 1 and began to draw up procuratorial legislation speedily. On November 2, the second procuratorial committee session of the Supreme People's Procuratorial Administration adopted the Provisional Organic Rules of the Supreme People's Procuratorial Administration of the Central People's Government which was submitted to the Central People's Government for approval. On December 20, after approval of Chairman Mao Zedong, the Rules entered into effect provisionally. Though it was a provisional one, this document had legal effect and became the first procuratorial legislation in China which was of new importance for the rule of law in a different time. It stipulated in detail the nature, organizational structure, functions and powers, composition and source of personnel, inner institutions and duties, relations with organs concerned and meeting rules, thus provided the basic content of Chinese Procuratorial

system legally and laid a basis for the gradual progress of it.

On September 20, the first Constitution of the People's Republic of China was adopted. Article 81 of it stipulated: "The Supreme People's Procuratorate exercises procuratorial authority on the observation of the law of administrations of the State Council, local state organs at different levels, functionaries of the state organs and citizens. Local procuratorates at various levels and special procuratorates exercise procuratorial authority in the legally prescribed scope." "Local people's procuratorates at various levels and special procuratorates shall be under the leadership of the people's procuratorates at higher levels, and all of them are under the unified leadership of the Supreme People's Procuratorate." According to Article 82, "the term of office of the Procurator-General of the Supreme People's Procuratorate is four years. The organization of the people's procuratorates are regulated by law." So, the Constitution's provisions on the procuratorial system have six points: (1) change the name from "people's procuratorate administration" to "people's procuratorate"; (2) the establishment of the people's procuratorates including the Supreme People's Procuratorate, the Local people's procuratorates at various levels and special procuratorates is stipulated; (3) it is provided that the Supreme People's Procuratorate exercises procuratorial authority on the observation of the law of administrations of the State Council, local state organs at different levels, functionaries of the state organs and citizens; (4) leadership in a vertical line is applied; (5) the local people's procuratorates at various levels shall exercise procuratorial powers independently in accordance with the law, and that they shall not be subject to interference by any local administrative agency; and (6) the term of office of the Procurator-General of the Supreme People's Procuratorate is four years.

Only one day after the adoption the Constitution Law, the Organic Law of the Procuratorates of People's Republic of China was adopted. It stipulated in detail and clearly the establishment, functions and powers, working principles, structure of leadership, procedure for exercising authority, election and removal of the personnel, and so on of the people's procuratorates, so the Chinese system of procuratorates is set up formally.

In 1982, new Constitution Law of China was adopted which stipulates the system of procuratorates more completely. It confirms the basic content of the Organic Law of People's Procuratorates promulgated in 1979 including provisions such as the nature, establishment of inner organs, relationship between higher and lower levels, relationship between the procuratorates and the organs of state power and the principle of exercising the procuratorial authority independently. It is of great importance for the development of the cause of

procuratorates later.

## **B. CONSTITUTIONAL STATUS OF CHINESE PROCURATORATES**

Article 129 of the Constitution and article 1 of the Organic Law of the People's Procuratorates both stipulates, "The people's procuratorates of the People's Republic of China are state organs for legal supervision." It clarifies the nature of the People's Procuratorates as state organs for legal supervision. People's procuratorates includes the Supreme People's Procuratorate and the people's procuratorates at various local levels, military procuratorates and other special people's procuratorates. The people's procuratorates exercise procuratorial power independently, in accordance with the provisions of the law. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. People's procuratorates at various local levels are responsible to the organs of state power which created them and to the people's procuratorates at higher levels.

Thus, the procuratorates have very important status in Chinese structure of state organs which is decided by its nature. In China, the procuratorate is produced by and responsible to the organ of state power at corresponding level. They are independent state organs, established independently and having their own system. They exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual. Compared with their counterparts in western countries, the status of Chinese procuratorates in structure of state organs are higher than that of many of them in many countries.

## **C. TASKS OF THE PROCURATORATES**

According to article 4 of the Organic Law of People's Procuratorates, "By exercising their procuratorial authority, the people's procuratorates suppress all treason, attempts to split the country or other counterrevolutionary activities, and prosecute counterrevolutionaries and other criminals. Their purpose is to safeguard the unity of the country, the people's democratic dictatorship and the socialist legal system; to maintain public order, including order in production and other work, in education and scientific research, and in the daily life of the people; to protect the socialist property owned by the whole people and by collectives and the private property lawfully owned by individuals; to protect the citizens' rights of the person and their democratic and other rights; and to ensure the smooth progress of socialist

modernization.” “The people’s procuratorates also educate the citizens, encouraging them to be loyal to their socialist motherland, to conscientiously observe the Constitution and the laws and to combat illegal activities. “

#### **D. THE ESTABLISHMENT OF THE PROCURATORATES**

The organizational structure of people’s procuratorates is decided by the administrative division. At the same time, the establishment of the people’s court is also considered in order to conduct judicial activities smoothly and timely according to procedure laws. Article 2 of the Organic Law of People’s Procuratorates stipulates, “The People’s Republic of China shall establish the Supreme People’s Procuratorate and the people’s procuratorates at various local levels, military procuratorates and other special people’s procuratorates.” It reflects that the procuratorates in China are a up-to- down unitive and complete system.

The Supreme People’s Procuratorate is the highest procuratorial organ. It is responsible to the National People’s Congress and its Standing Committee and reports to them on its work.

The local people’s procuratorates at various levels are the common procuratorates except the Supreme People’s Procuratorate. they are responsible to the people’s congresses and their standing committees at the corresponding levels and are under the leadership of the people’s procuratorate(s) at the next higher levels. According to the Organic Law, they are divided into three levels:

- (1) people’s procuratorates of provinces, autonomous regions and municipalities directly under the Central Government;
- (2) branches of the above, and people’s procuratorates of autonomous prefectures and cities directly under the provincial governments; and
- (3) people’s procuratorates of counties, cities, autonomous counties and municipal districts.

The Law also stipulates that if their work requires it, people’s procuratorates at provincial or county level, with the approval of the standing committee of the people’s congress at the corresponding level, may set up branches in industrial and mining areas, agricultural reclamation areas, forest zones, etc.

## **E. QUALIFICATIONS FOR A PROCURATOR**

Public procurators are the procuratorial personnel who exercise the procuratorial authority of the State according to law, including chief procurators, deputy chief procurators (the Procurator-General, Deputy Procurators-General of the Supreme People's Procuratorate), members of procuratorial committees, procurators and assistant procurators of the Supreme People's Procuratorate, local people's procuratorates at various levels and special people's procuratorates such as military procuratorates.

Qualifications for a procuratorate. According to article 10 of the Public Procurators Law of the People's Republic of China, a public procurator must possess the following qualifications:

- (1) to be of the nationality of the People's Republic of China;
- (2) to have reached the age of 23;
- (3) to endorse the Constitution of the People's Republic of China;
- (4) to have fine political and professional quality and to be good in conduct;
- (5) to be in good health; and
- (6) to have worked for at least two years in the case of graduates from law specialties of colleges or universities or from non-law specialties of colleges or universities but possessing the professional knowledge of law; or to have worked for at least one year in the case of Bachelors of Law; those who have Master's Degree of Law or Doctor's Degree of Law may be not subject to the above-mentioned requirements for the number of years set for work.

According to article 11 of the Public Procurators Law, the following persons shall not hold the post of a public procurator:

- (1) to have been subjected to criminal punishment for commission of a crime; or
- (2) to have been discharged from public employment.

Appointment and removal of the procurators. The article 12 of the Procurators Law stipulates: a public procurator shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the

Constitution and laws. To be exact,

The Procurator-General of the Supreme People's Procuratorate shall be elected or removed by the National People's Congress. The Deputy Procurators-General, members of the procuratorial committee and the procurators shall be appointed or removed by the Standing Committee of the National People's Congress upon the recommendation of the Procurator-General of the Supreme People's Procuratorate.

The chief procurators of the local People's Procuratorates at various levels shall be elected or removed by the local people's congresses at the corresponding levels. The deputy chief procurators, members of the procuratorial committees and procurators shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of those procuratorates.

The appointment or removal of the chief procurators of the local People's Procuratorates at the various levels must be reported to the chief procurators of the People's Procuratorates at the next higher level, who shall submit the matter to the standing committee of the people's congress at that level for approval.

The chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of the branches of the People's Procuratorates set up in prefectures in the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government.

The assistant procurators of the People's Procuratorates shall be appointed or removed by the chief procurators of the procuratorates where they work.

The measures for the appointment or removal of the chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of such special People's Procuratorates as the military procuratorates shall be formulated by the Standing Committee of the National People's Congress separately.

Persons to be appointed procurators or assistant procurators for the first time shall be selected through public examination and strict appraisal, from among the best qualified for the-- post, and in accordance with the standards of having both ability and political integrity.

Persons to be appointed chief procurators, deputy chief procurators or members of

procuratorial committees shall be selected from among those who are experienced in practical work.

If a public procurator is found to be in any of the following circumstances, a report shall be submitted according to law concerning the removal of his or her post:

- (1) having forfeited the nationality of the People's Republic of China;
- (2) having been transferred out of this procuratorate;
- (3) having no need to maintain his or her original post after a change of post;
- (4) being determined to be incompetent in the post through appraisal;
- (5) being unable to perform the functions and duties of a public procurator for a long period of time due to poor health;
- (6) having retired from the post;
- (7) having resigned the post, or having been dismissed;
- (8) being disqualified from continuing to hold the post because of violation of discipline, law or commission of a crime; or
- (9) other circumstances that call for removal of the post.

Where an elected chief procurator of a People's Procuratorate does not possess the qualifications as provided by this Law, or a chief procurator of a People's Procuratorate is elected in violation of the statutory procedures, the chief procurator of a People's Procuratorate at the next higher level shall have the power to apply to the standing committee of the people's congress at that level for disapproval.

The Procurator-General of the Supreme People's Procuratorate and the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government may make proposals to the standing committees of the people's congresses at the corresponding levels to remove or replace a chief procurator, a deputy chief procurator or a member of the procuratorial committee of a People's Procuratorate at lower levels.

No public procurators may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, judicial organs, enterprises or institutions, or serve as lawyers.

Posts to be avoided. According to article 18 of the Procurators Law, public procurators who are connected by husband-wife relation-ship, or who are directly related by blood, collaterally related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

- (1) the chief procurator, deputy chief procurators, or members of the procura-torial



- committee in the same People's Procuratorate;
- (2) The chief procurator, deputy chief procurators, procurators or assistant procurators in the same People's Procuratorate;
- (3) the procurators or assistant procurators in the same division; or
- (4) chief procurators or deputy chief procurators of the People's Procuratorates at the levels next to each other.

Grades of procurators. According to chapter 7 of the Procurators Law, public procurators are divided into twelve grades. The Procurator-General of the Supreme People's Procuratorate is Procurator-in-Chief. Public procurators from the second grade to the twelfth grade are composed of principal public procurators, senior public procurators and public procurators. Grades of public procurators shall be determined on the basis of their posts, their actual working ability and political integrity, their professional competence, their achievements in procuratorial work and their seniority.

## **F. SCOPE OF THE LEGAL SUPERVISION OF THE PROCURATORATES**

### **1. Legal supervision on the state organs**

State organs refers to the organs exercising state powers and in charge of state affairs including organs of state powers, administrative organs, judicial organs, procuratorates military organs and so on. According to the Constitution, "All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution or the law must be investigated. "To ensure that the state organs act in accordance with law, keep the probity of them, strengthen and develop the people's democratic dictatorship, strengthen and develop the socialist economy, the enforcement and observation of law shall be supervised.

Basing on the historical experiences and reality of the construction of the people's procuratorates, the Organic Law of People's Procuratorates revised in 1979 adjusted the scope of the supervision of the state organs and put stress on the state organs concerning criminal actions which are judicial organs, public security organs, state security organs, jails, houses of detention and other institutions in charge of rehabilitation through labor, as well as the execution of criminal sentences, and other state organs which violate the law seriously and commit a crime.

## **2. Supervision on the state functionaries**

The state functionaries refer to “persons in all state organs, enterprises and institutions and other persons dealing with public affairs according to law.”

- (1) “Including persons in all state organs of state powers, administrative organs, judicial organs at various levels, and armies, state-owned enterprises, state institutions, and other persons dealing with public affairs according to law.”
- (2) Other persons dealing with public affairs according to law generally refer to “the persons authorized by state organs, enterprises and institutions to deal with public affairs.”
- (3) People’s procuratorates have the power to supervise the act of state functionary if it violates law and commit a crime.

## **3. Supervision of the violation of law by citizens**

According to the Constitutional Law, “Citizens of the People’s Republic of China must abide by the Constitution and the law”; “they must not commit acts detrimental to the security, honor and interests of the motherland”; “citizens of the People’s Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens”.

The principles, standards and procedure of the supervision of the violation of citizens are stipulated in detail in Constitution, Criminal Law, Civil Law, Marriage Law, Criminal Procedure Law, Organic Law of People’s Procuratorates and other law and regulations.

## **4. Supervision of the violation of Chinese law by foreigners**

According to article 32 of the Constitution, “Foreigners on Chinese territory must abide by the laws of the People’s Republic of China. “ If a foreigner violate Chinese law, except that there is other special provision in the law, the legal responsibility shall be investigated. As state organs for legal supervision, the people’s procuratorates shall exercise their power of legal supervision of the violation of law by foreigners according to the law. Article 3 of Chinese Criminal Law stipulates, “For acts that are explicitly defined as criminal acts in law, the offenders shall be convicted and punished in accordance with law; otherwise, they shall not be convicted or punished.” And article 12 of Chinese Criminal Procedure Law provides, “Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated.” These are the legal ground for people’s procuratorates to exercise legal supervision of the violation of Chinese law by foreigners.

## **G. CONTENT OF THE LEGAL SUPERVISION**

According Chinese laws concerned, content of the legal supervision of the people's procuratorates includes that of law discipline, investigation, criminal trial, execution, civil trial, administrative trial, etc.

### **1. Supervision of law discipline**

It refers to the legal supervision of the people's procuratorates of all treason, attempts to split the country or other counterrevolutionary activities of state functionaries, and crimes of state functionaries and other citizens which violate the citizens' rights of the person and their democratic and other rights. Through the supervision of law discipline, it is to find all counterrevolutionary activities of the treason or attempts to split the country crimes violating the citizens' rights of the person and their democratic and other rights and crimes of dereliction of duty, and investigate the criminal responsibilities of the criminals, so as to safeguard the inviolability of the citizens' rights of the person and their democratic and other rights, maintain the order of the state organs, protect the socialist legal system and strengthen the people's democratic dictatorship.

According to different nature of the law discipline cases, the supervision of law discipline includes two categories: special one and common one. The special law discipline is the exercise of procuratorial power by the people's procuratorates on the cases of treason, attempts to split the country and major crimes with grave damage to the unified and proper enforcement of the national policies, laws, regulations, decrees and orders. And the common law discipline is the exercise of procuratorial power by the people's procuratorates on the cases of crimes of dereliction of duty of the state functionaries, crimes violating the citizens' rights of the person and their democratic and other crimes accepted directly by the procuratorates. The main content of law discipline supervision is as follows:

(1) To maintain the unified and proper enforcement of the state policies, laws, regulations, decrees and orders and the unity of the country. One of the important duties of the people's procuratorates authorized by the law is to exercise the procuratorial power to cases of treason, attempts to split the country and major crimes with grave damage to the unified and proper enforcement of the national policies, laws, regulations, decrees and orders. According to the inner division of the jurisdiction, it belongs to one of the tasks of law discipline. Once this kind of major counterrevolutionary cases of nature of conflict between enemy and the people, the people's procuratorats shall investigate them and initiate prosecution concerned on

the behalf of the state according to the law, so as to maintain the unity of the country and the legal system, and safeguard the people's democratic dictatorship and socialism.

(2) To protect the citizens' rights of the body and democratic rights in order to encourage fully the zeal of the mass to participate the construction of modern socialism. The inviolability of the citizens' rights of the body and democratic rights is prescribed in the Constitution Law. The Criminal Law stipulates the punishment to crimes violating these rights in a specific chapter. The Criminal Procedure Law authorizes the power to the people's procuratorates to investigate the crimes of this kind. By the legal supervision of law discipline, the procuratorates investigate the crimes according to law such as coercing confession, illegal detention, malicious prosecution, frame-up, perjury, interference with the election, illegal control, illegal search, intrusion into the citizen's house and infringement of the freedom of correspondence of citizens so as to ensure the actual realization of the citizens' rights of the body and democratic rights, encourage the zeal of the mass and promote the smooth development of the cause of socialist construction.

(3) To investigate the state functionaries' crimes of dereliction of duty, support the socialist legal system and guarantee the smooth operation of the state organs. According the Chinese Constitution Law, All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution or the law must be investigated. Chapter 9 of the Criminal Law stipulates the crimes of dereliction of duty especially. The Criminal Procedure Law authorizes the power to the people's procuratorates to investigate these crimes. By the legal supervision of law discipline, the procuratorates investigate the crimes according to law such as cases of using power to gain private benefit, abusing his power, bribe, engaging in malpractices for personal gain, bending the law for bribe and neglect of duty, in order to guarantee the smooth operation of the state organs, strengthen the state functionaries' awareness of the legality and responsibility, and promote the standardization and legality of the state control of administration and economy.

## **2. Supervision of the investigation**

It is the people's procuratorates' supervision of the legality of the cases and activities of investigation of the public security organs. According to para.3 of article 5 of the Organic Law of People's Procuratorate, "Review cases investigated by the public security organs and decide whether to approve arrest and whether to prosecute or not to initiate prosecution; supervise the investigation activities of public security organs and state security agencies to

determine whether they conform to the law.” Basing on this provision, the content of investigation supervision includes four items:

(1) Review of the cases transferred by the public security organs during investigation with a request for arrest, decide the guilty of the suspect, the clarity of the criminal facts, sufficiency of the evidence, possibility of criminal punishment of imprisonment and above, the necessity of arrest, and decide whether to arrest him or not according to the Criminal Law. In addition, it is necessary to examine other things concerned such as whether there is some accomplice shall be reported to arrest but has been omitted. This is usually called approval of arrest.

(2) Review cases investigated and concluded by the public security organs, examine the clarity of the criminal facts and circumstances, the reliance and sufficiency of the evidence, possibility of wrongly investigation of criminal responsibility, and then decide whether to prosecute or not to initiate prosecution. At the same time, it is necessary to examine whether there is someone who shall be prosecuted but whose materials fail to be transferred for initiation of prosecution. This is usually called prosecution review.

(3) By the review of arrest and prosecution, to supervise the legality of investigation of the public security organs. If something in breach of law is found, the public security organ concerned shall be notified to correct orally or in written.

(4) To supervise the violation of law or discipline of the investigatory personnel. During the investigation, if the investigatory person violates the law and commit crimes such as extortion of confessions by torture, falsifying, concealing or destroying evidence, or malpractice for personal gain, his criminal responsibility shall be investigated according to law. If the wrongdoing does not constitute a crime, suggestion shall be given to the public security organ for handling of it.

As to the cases accepted directly and investigated by the people’s procuratorates themselves, as the inner supervisory system of the procuratorates stipulates, the department in charge of investigation shall transfer the case for request of arrest of suspect, or the concluded case for request of initiation of prosecution or exemption of initiation of prosecution to the criminal procuratorial department, with the opinions, case files, evidences concerned together. And the latter after review shall put up the proposal for arrest, initiation of prosecution or exemption of prosecution and report to the chief procurator or the procuratorial committee to decide.

### **3. Supervision of the criminal trial**

It is the people's procuratorates' supervision of the criminal trial of the people's court. It is an important part of the legal supervision. To be exact, the content of supervision of the criminal trial includes examination of

- (1) legality of the composition of the tribunal;
- (2) conduction of the criminal trial in accordance with the legal procedure and within the legal period;
- (3) violation of the procedural rights of the litigants and other participants in proceedings;
- (4) the definite error of the judgment and order of the people's court of the first instance; and
- (5) the definite error of the legally effective judgment and order of the people's court.

When definite error is found by the procurators appearing in the court to support the public prosecution, it shall be pointed out in the court orally or notified to the people's court in written after the hearing according to specific circumstances to set it right. If the people's procuratorate finds there is some definite error in the criminal judgment or order of the people's court of first instance which is not effective yet, it shall present a protest according to the procedure of second instance; and if it finds so in the legally effective criminal judgment or order of the people's court, it shall present a protest according to procedure for trial supervision.

### **4. Supervision of executions**

It is also called supervision of the executions in the prisons and under custody in the jurisdiction division inside the procuratorates. It is the supervision of the executions of the legally effective criminal judgments and orders of the people's court and legality of the conducts of the executing organs, which is also an important part of the legal supervision. According to the Chinese Criminal Procedure Law and Organic Law of People's Procuratorates, the procuratorates supervise the execution of sentences in criminal cases and the activities of prisons, houses of detention and institutions in charge of reform or rehabilitation through labor to determine whether they conform to the law. In accordance with the law, it includes the supervision inside and outside of the prisons and places like them. The

content is as follows,

(1) supervision of the execution of the sentences of the criminal. If the criminal behaves well, shows true repentance, obeys the law or renders meritorious service while serving his sentence, he should be granted a commutation of sentence or be released on parole according to law. If a criminal commits a crime again while serving his sentence, or if a criminal act that is discovered was not known at the time of judgment, he shall be transferred for prosecution according to law;

(2) supervision of the error in the criminal judgment or order. If some definite error is found, a protest shall be presented according to procedure for trial supervision;

(3) supervision of the activities of prisons, houses of detention, reformatories, correctional institutions for juvenile delinquents, jails and institutions in charge of rehabilitation through labor to determine whether they conform to the law. Any breach of law shall be notified to the organs concerned to set it right;

(4) supervision of the legality of the supervision of the public security organs and grass-roots organizations of the criminal whose sentence is executed outside prison. Any breach of law shall be notified to the organs concerned to set it right; and

(5) supervision on the spot of the capital penalty execution. It mainly includes the supervision of the legality of the proceeding of the execution and the existence of circumstances which may occur and lead to the cancellation of the execution of the penalty.

## **5. Supervision of the civil trial**

Article 14 of the Civil Procedure Law stipulates, “The people’s procuratorates shall have the right to exercise legal supervision over the civil proceedings.” According to this Law, the supervision of the civil trial includes: If a legally effective judgment or order made by a people’s court involves any of the following circumstances, the people’s procuratorate shall lodge a protest in accordance with the procedure for trial supervision: (1) the main evidence ascertaining the facts in the previous judgment or order was insufficient; (2) there was error in the application of the law in the previous judgment or order; (3) a violation of the legal procedure may have affected the correctness of the judgment or order; or (4) the judicial personnel committed embezzlement, accepted bribes, practiced malpractice for personal benefits and twisted the law in trial of the case.

## **6. Supervision of the administrative trial**

Article 10 of the Administrative Procedure Law of the People’s Republic of China

stipulates, “The people’s procuratorates shall have the right to exercise legal supervision over administrative proceedings. However, the content of this kind of supervision has not been stipulated in detail so far; there is only a provision that if it is found that there is any breach of law in the legally effective administrative judgment and order made by the people’s court, the people’s procuratorate has the power to present a protest. Theoretically, it is accepted that the supervision of the administrative trial by the people’s procuratorates still includes the specific content as follows,

- (1) supervise the major administrative breach of law in which the citizen’s or legal person’s legitimate rights and interests suffered serious damage or administrative case in which the litigants dare not to file the suit or have no ability to do so, investigate the facts of the case and initiate or participate the suit concerned;
- (2) supervise the legality of the composition of the administrative tribunal;
- (3) supervise the compliance of the legal procedure of the administrative trial by the people’s court;
- (4) supervise the legality of the execution of the administrative judgment or order made by the people’s court; and
- (5) supervise the protection of the legal rights of the participants of the administrative proceedings.

During the supervision of the administrative trial, any breach of law of the trial activities of the people’s court or in the judgment or order made by the people’s court found by the people’s procuratorate, shall be pointed out to set it right; if the definite error is found in the judgment or order, the protest shall be presented; and if a judge violates the law seriously and commits a crime, his criminal responsibility shall be investigated. Through the supervision of administrative trial, the procuratorates ensure the smooth conduct of the administrative trial according to law, guarantee the correctness of the administrative judgment or order, maintain the proper implementation of the administrative laws, safeguard the legitimate rights and interests of the citizens and legal persons and promote the strict enforcement of law by the administrative organs.

## **H. ATTACHMENT OF FORMS**

1. The form of statistics of the people’s procuratorates in China;
2. The form of the composing of the personnel of the people’s procuratorates in China.



## I. RELEVANT STATISTICS

**Table 1 Statistics of the people's procuratorates in China: ( Until 13/31/1997)**

<b>Level of procuratorate</b>	<b>Number</b>
Supreme procuratorate	1
Provincial procuratorate	31
Branches of Provincial procuratorate at city level, procuratorate of Autonomous region	397
Procuratorate of counties and Autonomous counties,	3097
Branches of local Procuratorate	161
Procuratorate of Military	81
Procuratorate of rail transportation	72

**Table 2 Personnel of the people's procurator in China ( Until 12/31/1997)**

<b>Capacity</b>	<b>Number</b>
Chief and deputy procurators	13,328
Procurators	102,258
Assistant Procurator	44,338
Clerks	26,386
Police	10,697
Other cadres	12,817
workers	12,088
Total	221,912